

PT 01-11

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**GOOD SHEPHERD
EVANGELICAL
LUTHERAN CHURCH,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0032
(99-22-0337)
P.I.N: 09-20-206-005**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Harold Rohlfing, attorney at law, on behalf of the Good Shepherd Evangelical Lutheran Church (hereinafter the “applicant”); Mr. Robert G. Rybica, Assistant State’s Attorney for the County of DuPage on behalf of the DuPage County Board of Review (hereinafter the “Board”).

SYNOPSIS: This matter presents the limited issue of whether the home and garage improvements situated on real estate identified by DuPage County Parcel Index Number 09-20-206-005, together the ground and yard areas ancillary thereto,¹ were “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) at any point during the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed a Petition for Tax Exemption with the Board on August 13, 1999. The Board reviewed applicant’s petition and recommended to the Illinois Department Of

Revenue (hereinafter the “Department”) that the entire subject property be exempt as of May 11, 1999. On February 17, 2000, the Department issued a determination finding, in pertinent part, that the portion in dispute was not in exempt use during that 66% of the 1999 assessment year which began on May 6, 1999.

Applicant filed an appeal as to this partial denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department’s determination as to the portion in dispute be reversed.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by Dept Ex. Nos. 1, 2, 3.
2. The Department’s position in this case is, for present purposes, that the portion in dispute is not in exempt use. Dept. Ex. No. 3.
3. Applicant, a member of the Congregation of the Wisconsin Evangelical Lutheran Synod, obtained ownership of the subject property by means of a trustee’s deed dated May 6, 1999. Applicant Ex. No. 1; Tr. pp. 28-29.
4. The subject property is located in the immediate vicinity of applicant’s main church complex. This entire complex, which contains applicant’s church building, its school and the pastor’s parsonage, was exempt from real estate taxation throughout the 1999 assessment year. Administrative Notice; Dept. Ex. Nos. 2, 4; Applicant Ex. No. 3.
5. The portion of the subject property that is currently in dispute is improved with a one story house and a detached garage. Dept. Ex. No. 2; Applicant Ex. 3.

1. The property itself shall hereinafter be referred to as the “subject property;” the house, garage and their ancillary land areas shall hereinafter be referred to as the “portion in dispute.”

6. Applicant purchased the house in order to provide housing for one of its teachers, Ellen Zank, who started her employment with applicant in the summer of 1999.² Tr. pp. 13, 56.
7. Ms. Zank taught kindergarten through 2nd grade, assisted with applicant's Vacation Bible School and served as athletic director during applicant's 1999 school year. Applicant Ex. No. 5; Tr. pp. 13, 18-20, 55-56.
8. Applicant specifically required that Ms. Zank live in the house as a condition of her employment. Applicant Ex. Nos. 4, 6, 7; Tr. pp. 16, 34-35, 41, 58-59.
9. Ms. Zank's office was located in the house. She performed many of her job duties, such as scheduling athletic events and grading papers, while residing in the house. Tr. pp. 56, 63.
10. Applicant stored church property, such as its lawn maintenance equipment and extra school desks, in the garage. Applicant Ex. No. 3; Tr. pp. 24-25, 60.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute, and by inclusion, the entire subject property, from real estate taxes for 66% of the 1999 assessment year.³ Accordingly, under the reasoning given below, the determination by the Department that said property does not

2. Unless context clearly specifies otherwise, the uses described in this and all subsequent findings of fact shall be understood to uses that took place between the date of purchase, May 6, 1999 and the final date of the 1999 assessment year, December 31, 2001.

3. Neither applicant nor the Board have contested that portion of the Department's determination which limited the exemption to that 66% of the 1999 assessment year which occurred on or after the date of purchase, May 6, 1999. Accordingly, I shall leave that limitation undisturbed on proceed on the assumption that any and all exemptions granted herein shall be for 66% of the 1999 assessment year.

qualify for such exemption under 35 ILCS 200/15-40 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, (hereinafter the “Code”), wherein the following are exempted from real estate taxation:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and use in conjunction therewith as housing facilities provided for ministers ... performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations... [.]

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed so that all factual and legal inferences favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Consequently, any doubts or debatable questions as to whether property falls within a given statutory exemption provision must be resolved in favor of taxation. *Id.*

In this case, the relevant statute requires that the property in question be “used exclusively for religious purposes.” 35 ILCS 200/15-40. The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the

primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

The specific "religious purpose" at issue herein is that of a residential employee. Residences occupied by employees of religious organizations or other exempt entities cannot be exempted from real estate taxation absent appropriate proof that either: (1) the resident-employee (a) performs an exempt function, such as educational or religious duties in the residence, and; (b) is required by those same exempt duties to live in the residence; or, (2) the resident-employee performs his/her duties in furtherance of the institution's exempt purpose in the residential facility. McKenzie v. Johnson, 98 Ill.2d 89, 98 (1983); Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989). (emphasis added).

Here, applicant submitted substantial documentary and testimonial evidence, which the Board did not contradict, to establish that Ms. Zank was in fact required to live in the house as a condition of her employment. *See*, Applicant Ex. Nos. 4, 6, 7; Tr. pp.

16, 34-35, 41, 58-59. Such evidence further proved that Ms. Zank performed many of her job duties while residing in the house. Based on this evidence, I conclude that the house was in exempt use throughout the pertinent portion of the 1999 assessment year. Therefore, the Department's determination concerning the house should be reversed.

With respect to the garage, it is briefly noted that storage facilities are subject to exemption, provided that applicant's use thereof is "reasonably necessary" to facilitate another specifically identifiable exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). The uncontradicted evidence which applicant presented as to its use of the garage established that applicant stored church-related property therein, specifically is lawn care equipment and spare school desks, therein during the relevant period. *See*, Applicant Ex. No. 3; Tr. pp. 24-25, 60. Such use was "reasonably necessary" in that it served the needs of applicant's main church complex, which was tax-exempt throughout 1999 and located immediately adjacent to the subject property. Therefore, the Department's determination with respect to the garage should be reversed.

In summary, all segments of the portion in dispute were in exempt use during the period in question. Thus, it appears that the Department's determination to the contrary was based on a lack of information that applicant cured at hearing. Accordingly, the entire subject property, inclusive of the portion in dispute, should be exempt from real estate taxes for 66% of the 1999 assessment year under Section 15-40 of the Property Tax Code.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that the entirety of real estate identified by DuPage County Parcel Index Number 09-20-206-

005, inclusive of all the improvements and land situated thereon, be exempt from real estate taxes for 66% of the 1999 assessment year.

March 8, 2001

Date

Alan I. Marcus
Administrative Law Judge